Supreme Court, U.S.
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SUPREMECOURTOFTHEUNITEDSTATES

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, ET AL., *
Petitioners, *

V · **No. 93-147**

JOHN COSEY *

Respondent. *

* * * * * * * * * * *

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Respondent is a seaman suing under 28 U.S.C. Sec. 1916, and pursuant to Rule 39, of the Rules of this Court, motion is hereby made that respondent be allowed to proceed *in forma pauperis*; he sought to so proceed in the Civil District Court for the Parish of Orleans and leave was granted. Respondent s affidavit is attached to this motion.

E. Howard McCaleb III Bar #9219
Attorney for Respondent, 3409 16th Street
Metairie, LA 70002 (504) 456-2424

CERTIFICATE OF SERVICE

I certify that a copy of this motion together with the attached affidavit were served upon counsel of record, Stephen J. Caire, Esq., by mail properly addressed postage prepaid, on this 9th day of August 1993.

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DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, ET AL., *
Petitioners, *
V * **No. 93-147**
JOHN COSEY, *
Respondent. *

* * * * * * * * * * *

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, John Cosey being duly sworn, depose and say that I am the respondent in the above entitled case; that in support of my motion to proceed *in forma pauperis* without paying the cost of printing to file my brief in opposition to the petition for writ of certiorari herein; that I believe I am entitled to this waiver.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting my opposition are true.

1. Are you presently employed? Answer: No

b. State the date of your last employment and the amount of wages that you received.

Answer: The last day that I worked was on the day of the accident May 14, 1991. I was earning about $1,200 a month as a Marine Oilier. I did try to earn some money to save my house which has been seized and for food. I worked for about 29 days driving people in a shuttle bus to the airport, but I could not stand the pain in my back due to the long driving and

sitting, so I had to give it up. I made about $400 before I had to give it up.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? Answer: Yes.

a. Describe each source of income, and state the amount received from each during the past twelve months.

Answer: Mr. McCaleb, my lawyer, has been helping me pay the first mortgage on my home. Mr. McCaleb has given me $173 a month for the first mortgage for the last twelve months, but he missed one month when he did not have the money. So he has given me $1,903.00 in the last year for the first mortgage on my home. Mr. McCaleb has also given me $337.00 in the last year to keep my lights turned on in my home.

3. Do you own any cash or checking or savings account? Answer: No

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishing and clothing)? Answer: Yes.

a. Describe the property and state its approximate value.

Although it has been seized by the second mortgagee, I still live in my house. It is a single story wood frame home with three bedrooms, worth about $21,000 I think. It has about a $12,000 judgment against it by the second mortgagee, and I have assigned my rights in this case over to the second mortgagee up to the amount of the judgment, if any, in order to live in the house. There is a first mortgage of about $8,000 outstanding.

My car is a 1984, 4-door Pontiac, with almost 200,000 miles on it, and I

think that it is worth about $400. I own nothing else of value.

5. List the persons who are dependent upon for support and state your relationship to those persons.

Answer: Ida Mae Cosey, my wife.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

John Cosey

John Cosey

SWORN TO AND SUBSCRIBED before me, this 9th day of August, 1993.

E. Hunt Wright Jr.

NOTARY PUBLIC

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No. 93-147

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, ET AL.

Petitioners,

V

JOHN COSEY,

Respondent.

Petition for a Writ of Certiorari to the Court of Appeal, Fourth Circuit, State of Louisiana

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION TO THE PETITION OF WRIT OF CERTIORARI

STATEMENT OF THE CASE

Petitioners' statement of the case is satisfactory, except that the petitioners failed to mention that they admitted in their answer, paragraph 13, that respondent, Cosey, has the status of a seaman.

ARGUMENT

If the United States Congress cannot constitutionally bring seamen within the scope of state compensation laws, neither can the Louisiana legislature nor its courts. *Bearden v. I.C. Breausx Towing* 365 So2d 1192, 1193 (3rd Cir 1978); U.S. Const. Art 3, Sec 2; *So. Pacific Co. v. Jensen* 37 SCt 524 (1917); *Knickerbocker v. Stewart* 40 SCt 438 (1920); *The Linseed King* 52 SCt 450 (1932)

CONCLUSION

The petition for certiorari should be denied.

E. Howard McCaleb III Bar #9219
Attorney for Respondent, 3409 16th Street
Metairie, LA 70002 (504) 456-2424

CERTIFICATE OF SERVICE

I certify that three copies of this Brief In Opposition To The Petition For Writ Of Certiorari were served upon counsel of record, Stephen J. Caire, Esq., by mail properly addressed postage prepaid, on this 9th day of August 1993.